

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

PRINCE FASHIONS, INC.,

Case No. 19-23079-rdd

Debtor.

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PRINCE FASHIONS, INC.,

Plaintiff,

v.

Adv. Pro. No. 19-08714-rdd

**60G 542 BROADWAY OWNER, LLC
AND 542 HOLDING CORP.,**

Defendants.

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ORDER ON MOTION TO DISMISS ADVERSARY COMPLAINT

UPON the motion, dated January 17, 2020 (with the accompanying Declaration of Nolan Shanahan, dated January 16, 2020, the “Dismissal Motion”) of 60G 542 Broadway Owner, LLC (“Defendant”) for entry of an order dismissing the adversary complaint (the “Complaint”) filed by Prince Fashions, Inc. debtor in possession and plaintiff herein (“Plaintiff”) pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, made applicable by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure; and upon the Plaintiff’s response in opposition to the Dismissal Motion, dated February 10, 2020 (the “Response”); and upon the Defendant’s reply to the Response, dated March 9, 2020 (with the Declaration of Nolan Shanahan in support of the Reply, dated March 9, 2020, the “Reply”); and upon the record of the hearing held by the Court on the Motion on July 14, 2020; and the Court having determined it has subject matter jurisdiction to consider the relief requested in the Dismissal Motion pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b) as a core proceeding under 28 U.S.C. § 157(b); and the Court having determined that venue is proper in this district pursuant to

28 U.S.C. §§ 1408 and 1409; and there being due and sufficient notice of the Dismissal Motion and no further notice being required; and after due deliberation and for the reasons stated by the Court in its bench ruling at the hearing, the relief set forth herein being warranted, it is hereby

ORDERED, that the Dismissal Motion is granted to the extent set forth herein and otherwise denied; and it is further

ORDERED, that the Complaint fails to state a claim for recharacterization under Fed. R. Civ. P. 12(b)(6); and it is further

ORDERED, that the Defendant shall have until August 28, 2020, that date being 45 days from the date of the hearing held on July 14, 2020, to file a motion under Fed. R. Bankr. P. 7015 for leave to amend the Complaint (“Motion for Leave to File Amended Complaint”) attaching a blackline showing the changes made to the Complaint; and it is further

ORDERED, that if (a) the Plaintiff fails to file a Motion for Leave to File Amended Complaint by August 28, 2020 or (b) the Court denies the Motion for Leave to File Amended Complaint without granting leave to file a further motion for leave to amend under Fed. R. Bankr. P. 7015, the Complaint shall be deemed to be dismissed with prejudice; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to this Order.

DATED: White Plains, New York
July 15, 2020

/s/Robert D. Drain

Honorable Robert D. Drain
United States Bankruptcy Judge